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Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 04-124
Amendment of Section 73.202(b),)	RM 10936
Table of Allotments,)	RM 10937
FM Broadcast Stations)	RM 10938
Dallas, Oregon)	RM 10939

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Federal Communications Commission
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To: Chief, Audio Division, Media Bureau

Reply Comments in Support of Proposed Rulemaking

Radio Bilingue, Inc., by its counsel and pursuant to Sections 1.415 and 1.420 of the Commission's Rules and the Notice of Proposed Rulemaking in this matter (DA 04-963, released April 14, 2004), hereby replies to the Comments of Radio Beam, LLC ("Radio Beam") with respect to the reservation for noncommercial use of Channel 252C3 at Dallas, Oregon proposed by Radio Bilingue, by Northwest Community Radio Project, by Dallas, Oregon Seventh Day Adventist Church and by Lifetime Ministries, Inc. The essence of Radio Beam's Comments are a plea that, in deciding upon the reservation of an allocation for noncommercial use, the Commission should hold against a proposal for a new noncommercial reservation certain operations on frequencies not reserved for noncommercial use which are currently offering programming of a noncommercial nature.

Non-Reserved Channels Should Not Bar an Otherwise Qualified Noncommercial Reservation

Whatever programming these stations may be offering at the moment, however, there is no reservation commitment as to how their frequencies may be used in the

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future. Unreserved noncommercial stations can and do get sold for commercial use.¹ Their existence at one point in time does not guarantee noncommercial service for the community in the future. That is why the Commission, instead of relying on the mere existence of such unreserved operations, has adopted a policy of reserving allocations permanently for noncommercial use. Given the fact that this is the last opportunity for noncommercial reservation², the existence of such evanescent programming practices should not afford a basis for rejecting the community's last chance for a long-term binding reservation for noncommercial use. The basic purpose of the Commission's reservation of noncommercial channels is to assure that they will not be lost to the community when they are not put on the commercial market at some future time. If the Commission were indifferent to such long-term potential, there would be no purpose in having noncommercial reservations in the first place.

One of the fundamental characteristics of the Commission's allocation policies is that it does not take into account programming choices made by its licensees or potential licensees with freedom to choose and freedom to change their choices. The Commission makes a sharp distinction between the two and has, for example, a fundamentally different way of granting licenses in the two cases. It takes a longer view that focuses on a "a fair, efficient, and equitable distribution of radio service." 47 U.S.C. Sec. 307 (b). The Commission's requirement in Section 202 (a) (1) of its Rules, which addresses noncommercial reservations, that a channel proposed for reservation should "provide a first or second noncommercial service to at least ten per cent of the population within the 60 dBu contour of the proposed station" is intended to reflect the Commission's overall allocation policy of treating reserved frequencies as fundamentally different from temporary use. It is scarcely intended to put such permissive temporary use on a par with reserved channels.

¹ One conspicuous example in the Northwest is KRAB operated in Seattle, Washington, noncommercially by Jack Straw Memorial Foundation from 1963 to 1984 at 107.7 MHz. It was the second noncommercial community-supported station in the country and had a powerful signal with an ERP of more than 40 kW. Its frequency was sold for commercial use in 1984 and is now operated, under call letters "KNDD," as one of the six commercial radio broadcast stations owned in Seattle by Entercom Seattle License, LLC.

² Moreover, while in theory, a noncommercial entity could file an application for use of an unreserved channel, under the Commission's new Rules, the mere filing of a mutually exclusive commercial application no matter how weak (including one filed largely for the purpose of blocking the NCE application) would automatically require dismissal of the NCE application. *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691, FCC 03-44, released April 10, 2003, Para. 21.

Indeed, in an effort to attribute status to unreserved AM channels upon which is the principal leg of its argument, it has to go to a CPB effort even to identify such AM stations -- because they simply have no special status before the Commission different from commercial licensees³ for CPB deals with relatively short-term considerations and does not enter into the Commission's long-term allocation process and lacks legal authority to do so if it were so inclined.

The two station operations upon which it relies are primarily KOAC (AM) on 550 kHz in Corvallis, Oregon, operated currently by Oregon Public Broadcasting, and secondarily KLVU (FM) in Sweet Home, Oregon on FM Channel 269 currently operated by Educational Media Foundation with a religious "K-Love" format. No AM station, including KLVU, operates on a reserved noncommercial channel. KLVU's Channel 269 in Sweet Home, Oregon is not marked with an asterisk for noncommercial reservation in the Commission's Section 73.202 Table of Allotments. KLVU was previously operated commercially as KSKD and KNKN and can revert anytime that Educational Media chooses to cash in for a windfall profit by selling the station to a commercial operator.⁴

Radio Beam's Study is Inconsistent with the Commission's Requirements

It will be noted that Radio Beam's calculations reflected in its appended map are dependent upon the use of a non-circular service area for the proposed allotment of 252C3 to Dallas, Oregon. But for allotment proceedings, the Commission requires the use of omnidirectional contours. In Reexamination of the Comparative Standard for Noncommercial Educational Applicants, Second Report and Order, 18 FCC Rcd 6691, FCC 03-44, released April 10, 2003, Para. 35, the Commission explained with respect to proposals for reservation that:

³ *Noncommercial Educational Applicants Reexamination of the Comparative Standard for Noncommercial Applicants*, Second Report and Order, 18 FCC Rcd 6691, FCC 03-44, released April 10, 2003. Para. 2 and *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, FCC 00-120, released April 21, 2000, *rev'd on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), at Para. 114.

⁴ While Radio Beam makes a point that current license indicates "NCE status," such a notation does not determine the status of the frequency's allocation. Moreover, if it did determine the allocation status, it should be noted that the license of KOAC (AM) has no such annotation.

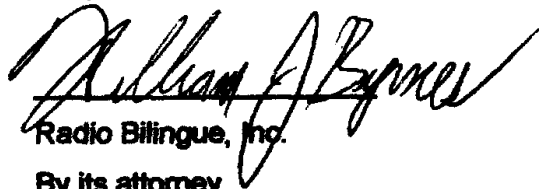
"The showing will be based on a circle, centered in the proposed community of license and drawn with a radius one kilometer less than the distance to the predicted 60 dBu strength signal of a maximum same-class facility. "

This is consistent with more generally established Commission practice. For instance in its decision in Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Kuna, Idaho), 15 FCC Rcd 4976, DA 00-539, released March 17, 2000, the Commission explained that: "At the allotment stage the Commission assumes omnidirectional signals operating at maximum facilities for all classes of stations except Class C stations." With respect to Class C, it explained that: "For Class C stations we assume omnidirectional signals based on the use of actual facilities." Noting that petitioner's predicted coverage map revealed its analysis appears was "based on projected terrain effects on signal propagation rather than omnidirectional contours," it rejected the non-circular contours." The Commission should reject them here also.

CONCLUSION

Accordingly, Radio Bilingue requests that the Commission reserve Channel 252C3 at Dallas, Oregon for noncommercial use.

Respectfully submitted,



Radio Bilingue, Inc.

By its attorney

William J. Byrnes

7921 Old Falls Road

McLean, VA 22102

703-821-3242

June 17, 2004

CERTIFICATE OF SERVICE

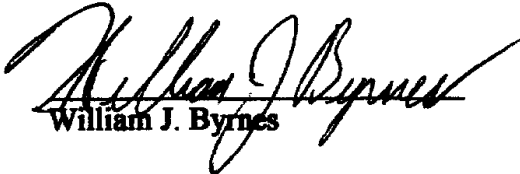
I, William J. Byrnes, hereby certify that I have caused to be served, this 17th day of June, 2004 a copy of the foregoing "Reply Comments in Support of Proposed Rulemaking" by First Class Mail, fees prepaid, on the following:

Earnest R. Hopseker, Manager
Radio Beam, LLC
285 Liberty St., N.E., Suite 340
Salem, OR 97301

Betty McArdle, VP/Treasurer
Northwest Community Radio Project
3740 SW Comus Street
Portland, OR 97219

Donald E. Martin, Esq.
c/o Dallas, Or. Seventh-Day, Adventist
P.O. Box 8433
Falls Church, VA 22041

David A. O'Connor, Esq.
Holland & Knight LLP
2099 Pennsylvania Ave. NW, # 100
Washington, DC 20006


William J. Byrnes